

Asbestos Programs Branch Update

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by Todd Wingler,
Asbestos Programs Branch Chief

This year has started off with quite a bit of excitement. We had begun compiling data gathered in our Region 7 office concerning the number of construction projects being performed without the required asbestos survey, when the Austin American Statesman approached us. The Statesman wanted to know of problems we were seeing in the asbestos industry. It didn't take long until we had three pages followed the next day by two more pages explaining the depth of the problem. One of the articles covered the advantages of the requirement to survey. It contrasted San Antonio where there is a requirement to survey before a permit is issued and showed the number of construction projects there to the number in Austin and Waco where there is no such requirement. It was obvious to all that the solution was to require a survey before issuing a permit.

Enter the 77th Legislature. We saw eight bills related to asbestos. While one covers more than asbestos, the other seven deal strictly with asbestos. House Bill 1278 and its companion Senate Bill 509 require that municipal construction permit offices see that an asbestos survey has been performed before issuing a permit. We found that over 80 percent of the time, an asbestos survey was not performed before demolitions or renovations began. What was even more alarming was that 70 percent of the time, asbestos was being disturbed in these projects. It pays to know what you are getting into because more times than not, you will disturb asbestos. Fortunately, this bill was signed into law on May 3, 2001, to be effective on September 1, 2001 for permits issued on or after January 1, 2002. So now if a building owner or contractor is not aware of the dangers of asbestos or the laws, he will be made aware when he files a permit request.

The other bills are House Bill 1279 and its companion Senate Bill 674 which, as it is currently amended, expands the Department's authority to enforce infractions of the requirements under the exempted work practices in the Resilient Floor Covering Institute (RFCI) guidelines. A related bill to these suggests allowing an exemption from licensing for floor removal provided it is performed consistent with federal Occupational Safety and Health Administration (OSHA) asbestos standards applicable to a removal subject to a negative exposure assessment, including federal OSHA Instruction CPL 2-2.63. This would expand the current exemption and allow the worker

protection regulation to be applied to the public in Texas. The Department has always felt that it is not safe to expose the public at the same levels that healthy workers are exposed.

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From the Administrator



by John Onyenobi, P.E.,
NSPE, R.S.
Asbestos Enforcement
Administrator

It is hard to believe that by the time you read this column, approximately three years of my administration will have passed. As I said at the start of my tenure, my challenge has been to stay out in front of the parade.

Rarely in recent times have the press, lawmakers and cities in the state of Texas been more anxious about the danger of asbestos containing building materials (ACBM). Numerous legislations were initiated by state representatives and senators on asbestos regulations. Suffice it to say that all looked promising to being enacted into law. As we all know, you can't understand where you are going until you see where you have been. This year's theme? In one sense it's back to '99.

Last year I had the opportunity of attending the National Conference of State Legislatures (NCSL) consisting of the 2000 National Asbestos Meeting. The annual meeting and the NCSL conference was a tremendous success, and I want to extend a belated congratulation to the Illinois Chapter on providing a great 2000 National Asbestos Meeting. Their planning and execution brought praise from all who attended. They have set a standard for future annual meetings to reach. Chicago is a great city and the hospitality of the host chapter certainly confirmed this.

Very important decisions were made at that meeting as the NCSL's board of directors took significant steps towards the future of the NCSL. Foremost, the board approved assistance to state rules review to ensure consistency in administrative and enforcement issues. There were talks about emerging and innovations in technology. One of the innovations in technology is the Project XL by the City of Fort Worth, Texas. The reaction to this project was mixed. We can't afford all that untested innovations in technology, people say. It may be okay for small scale short duration (SSSD) project in Texas, but around Chicago it may not work or be allowed.

Fair enough. The innovation in technology isn't for everyone. You can apply innovation you can afford. So in many cases, advantage may come from the owner/operator making sure what they apply is more affordable, meets the minimum standard established by law and has greater probability of success. It appears that the asbestos industry is a conservative industry. This does not just mean that we are reluctant to use new technology; there is often a resistance to doing conventional things differently. If ain't broke, don't fix it - the way we do it works well enough. Paradoxically, experience can inhibit innovation. Past successes are remembered but new thinking may be filtered out - been there, done that - we tried it years ago and it didn't work.

It is a fact, If you do what you've always done, you'll get what you always got! Not, perhaps, a ground breaking philosophical statement, but nicely illustrating that incremental improvements rarely lead to breakthrough performance. If the economics dictate that you must halve average abatement costs, and therefore renovate public buildings in one-third that previous average abatement costs, and therefore renovate buildings in one-third the previous averaging time, very substantial changes in execution are going to be needed.

An effective challenge process is essential if we are to achieve radical improvements with existing technology. This means getting new ideas about how things can be done differently, from any available source. It's not just multidisciplinary teams, although that may be part of it. It is not just including allies in decision-making and letting incentive contracts, although that may be part of it.

The first three years have been challenging and rewarding. Please keep pushing us and letting us know what you want. We are here to serve and help you. The goal of the Asbestos Programs Branch is to help you become successful in whatever you are doing in the asbestos industry without violating the rules.



The Newsletter is now available
on the web at:
www.tdh.state.tx.us/beh/asbestos

First Criminal Prosecution of Asbestos Removal Case in Texas by Jaye R. Stanley, PHR6

***What can happen if you do not follow TDH
and EPA rules for asbestos removal?***

On February 6, 2001, businessman Eric Ho was convicted in federal court of abating asbestos-containing material (ACM) fireproofing from Alief General Hospital in Houston without notifying Texas Department of Health (TDH) and without following Environmental Protection Agency (EPA) guidelines for removal. He faces up to \$500,000.00 in fines and up to 7 years in prison, with sentencing set for April 11, 2001. His renovation supervisor, Manuel Escobido, pleaded guilty to lying under oath about the abatement and faces up to 5 years in prison.

What was the case?

Following an explosion and fire at the old hospital in March 1998, TDH investigated an anonymous complaint that illegal asbestos abatement activity had taken place there. Meanwhile, Occupational Safety and Health Administration (OSHA) investigated the accident because three workers were injured in the fire. PHR6 inspectors and OSHA investigators soon joined forces to share information gathered from witnesses and evidence gathered from the site. Shortly after, EPA criminal investigators hooked up with TDH and OSHA.

What happens when three state and federal agencies cooperate over a two-year period?

TDH ordered and regulated the clean-up and demolition of the facility, which took 15 months and cost Mr. Ho an estimated \$250,000.00 plus \$44,000.00 in TDH fines (see Page 4). During the clean-up, TDH shared samples, photographs, and other physical evidence with OSHA and the EPA. Then PHR6 inspectors Tim Hendrix and Gary Williams testified for OSHA at the civil trial, resulting in \$1.1 million in fines against Mr. Ho for exposing undocumented, untrained workers to regulated RACM from December 1997 to March 1998. Finally, the same TDH inspectors testified for the EPA at the criminal trial, resulting in verdicts against the property owner and his supervisor. The total cost to Eric Ho could have reached almost \$1.9 million, conviction as a felon, and up to 7 years in federal prison.

Sentencing of Ho and Escobido was April 11, 2001.

Mr. Ho was sentenced to two months in a halfway house, two years of supervised release, and pay a fine of \$20,000.00. Escobido received one year probation and a \$1,000.00 fine. Perhaps the April 13, 2001 editorial section of the Austin-American Statesmen said it best about the sentencing in that “(m)ay it not be the last, and may U.S. District Judge Justin Quackenbush deliver tougher penalties for endangering lives next time.”



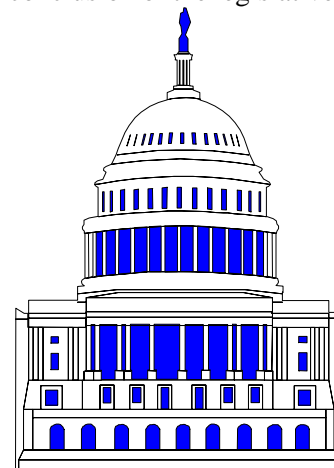
(Continue - From the Branch Chief)

House Bill 2844 allows cities to test new asbestos control methods approved by Environmental Protection Agency (EPA) during demolition. This bill was introduced to allow Fort Worth to test its method for demolition of nuisance buildings. If you want to know more about this project, look at these sites: http://www.fortworthgov.org/DEM/project_xl.htm and <http://www.epa.gov/projectxl/fortwor/>

Finally there is House Bill 1927, which bars the installation of asbestos materials in public and commercial buildings. Here is an idea that makes sense. If you spend so much money taking it out and protecting people from exposure to asbestos, why put it back in?

Well that's about it. If you want to learn more about these bills you can see their progress through the legislature by going to <http://www.capitol.state.tx.us/>.

Based upon all the activity in the legislature and Austin-American Statesmen, a special Asbestos Bulletin will be issued at the conclusion of the legislative session.



Asbestos Enforcement

The following entities have been issued an Agreed Order by the Texas Department of Health and have agreed to pay a penalty and/or conduct supplementary asbestos related activities to resolve these enforcement actions:

Absolute Environmental Services

Inspection Date: June 24, 1998

Location: La Marque Middle School, La Marque

Citations: Failure to preserve the public health by diminishing or eliminating hazards caused by the removal of asbestos containing material [25 TAC 295.45(f)]

Apple Springs United Pentecostal Church

Date of Inspection: November 18, 1999

Location: Apple Springs United Pentecostal Church, Apple Springs

Citation: Failure to provide notification of asbestos related activities [40 CFR Part 61, Subpart M, 61.145(b)(1)]

Austin Independent School District

Date of Inspection: N/A

Location: Johnston High School, Austin

Citation: Failure to provide a timely notification of asbestos related activities [25 TAC 295.61(c)]

Corner Stone Group

Date of Inspection: September 9, 1999

Location: Corner Stone Bldg., Austin

Citation: Failure to contract with or employ a licensed asbestos professional [25 TAC 295.34(e)]

Dallas Independent School District

1. *Date of Inspection:* N/A

Location: John W. Runyon Elementary School, Dallas

Citation: Failure to provide a timely notification of asbestos related activities [25 TAC 295.61(c) and 40 CFR Part 61, Subpart M, 61.145(b)]

2. *Date of Inspection:* N/A

Location: John J. Pershing Bldg., Dallas

Citation: Failure to provide a timely notification of asbestos related activities [25 TAC 295.61(c)]

Dyer Street Triangle Joint Venture

Date of Inspection: July 1, 1999

Location: Furr's Store No. 928, El Paso

Citations: Failure to conduct a mandatory asbestos survey, Failure to provide notification of asbestos-related activities [25 TAC 295.34(c) and 40 CFR Part 61, Subpart M, 61.145(a); 25 TAC 295.61(a) and 40 CFR Part 61, Subpart M, 61.145(b)(1)]

ECU Environmental Services, Inc.

Date of inspection: July 11, 1997

Location: Caldwell Elementary School, McKinney

Citations: Failure to install critical barriers, Failure to use a decontamination system, Failure to establish proper containment ventilation – no HEPA filtration, Failure to thoroughly wet regulated asbestos-containing material, Failure to follow abatement practices and procedures – warning signs, Failure to perform personal air monitoring [25 TAC 295.60(b), 25 TAC 295.60(e), 25 TAC 295.60(i), 25 TAC 295.60(j)(1) and 40 CFR Part 61, Subpart M, 61.145(c)(3), (c)(6)(i), 25 TAC 295.60(g), 25 TAC 295.60(m)(3)]

Fontana, Joseph

Date of Inspection: February 22, 2000

Location: Ginseng Restaurant, College Station

Citation: Failure to conduct a thorough asbestos inspection [25 TAC 295.34(c) and 40 CFR Part 61, Subpart M, 61.145(a)]

Gordon, Victor S., TDH License No. 60-0887, Gordon and Son's

Date of Inspection: October 10, 2000

Locations: Circle Chevron, Waco; and Commercial Bldg., 2901 East Veterans Memorial Blvd., Killeen

Citation: Performing asbestos related activities without a proper license [25 TAC 295.35(a), 25 TAC 295.49(a), 25 TAC 295.50(a)]

Hazard Assessment Leaders, Inc.

Date of Inspection: August 15, 1997

Location: 6-story Office Bldg., 10333 Harwin Drive, Houston

Citation: Failure to perform personal air monitoring [25 TAC 295.60(m)(3)]

Ho, Erik K.

Dates of Inspection: 1998 and 1999

Location: Old Alief Hospital, Houston

Citations: Failure to provide notification of asbestos related activities, Failure to employ licensed asbestos professionals, Failure to properly contain regulated asbestos-containing material (RACM), Failure to thoroughly wet RACM, Failure to properly manage asbestos containing material in a public building, Performing asbestos related activities without a license, Failure to perform air monitoring, Failure to adequately cover floors and walls within containment, Failure to provide respiratory equipment, Failure to prepare an abatement project design [25 TAC 295.61(a) and 40 CFR Part 61, Subpart M, 61.145(b)(1); 25 TAC 295.58(c); 25 TAC 295.60(j)(3) and 40 CFR Part 61, Subpart M, 61.150(a)(1)(iii); 25 TAC 295.60(j)(1), 25 TAC 295.60(c)(3) and 40 CFR Part 61, Subpart M, 61.145(e)(3), (e)(6)(i); 25 TAC 295.34(a); 25 TAC 294.34(e) and 25 TAC 295.35(a); 25 TAC 295.60(m)(3); 25 TAC 295.60(d); 25 TAC 295.46(e)(4); 25 TAC 295.34(g)]

Jangda, Yousaf

Date of Inspection: August 30, 1999

Location: Circle Chevron, Waco

Citations: Failure to conduct a mandatory asbestos survey, Failure to provide notification of asbestos related activities [25 TAC 295.34(c) and 40 CFR Part 61, Subpart M, 61.145(a); 25 TAC 295.61(a) and 40 CFR Part 61, Subpart M, 61.145(b)(1)]

Asbestos Enforcement (Continued)

Lashley, Linda

Date of Inspection: October 18, 1999
Location: Former Public Building, 711/713 Water Street, Kerrville
Citation: Failure to conduct a thorough asbestos inspection [40 CFR Part 61, Subpart M, 61.145(a)]

Northeast Independent School District

Date of Inspection: February 18, 1999
Location: Larkspur Elementary, San Antonio
Citation: Failure to inform workers of the presence of asbestos [25 TAC 295.34(a)]

South Central Laborers

1. *Date of Inspection:* N/A
Location: Albuquerque, New Mexico
Citation: Failure of training provider to submit a group photograph [25 TAC 295.65(f)(3)]

2. *Date of Inspection:* N/A
Location: Espanola, New Mexico
Citation: Failure of training provider to submit a group photograph [25 TAC 295.65(f)(3)]

Temple, City of

Date of Inspection: November 10, 1999
Location: Seville Apts., Temple
Citation: Failure to provide notification of demolition [40 CFR Part 61, Subpart M, 61.145(b)(1)]

Texas Valla Real Estate II, Inc.

Date of Inspections: July 1, 9, 10, 1998
Location: Former Stonebrook Apts., Houston
Citations: Denial of access to perform an inspection, Failure to conduct a mandatory asbestos survey, Failure to provide notification of asbestos-related activities [25 TAC 295.68(a) and 25 TAC 295.68(d); 25 TAC 295.34(c) and 40 CFR Part 61, Subpart M, 61.145(a); 25 TAC 295.61(a) and 40 CFR Part 61, Subpart M, 61.145(b)(1)]

Thorough Environmental Services, Inc.

Date of Inspection: August 18, 1999
Location: Gas Station/Convenience Store, 315 Liberty, Montgomery
Citation: Failure to provide notification of demolition activities [40 CFR Part 61, Subpart M, 61.145(b)(1)]

UBA Environmental Services

Date of Inspection: July 14, 1997
Location: Texas Woman's University, Denton
Citation: Providing analysis of samples with a lapsed license [25 TAC 295.54]

Wornat, Larry

Date of Inspection: January 14, 2000
Location: Old Marlin Democrats Bldg., Marlin
Citation: Failure to conduct an asbestos inspection [25 TAC 295.34(c) and 40 CFR Part 61, Subpart M, 61.145(a)]



The following entities have been issued a Default Order by the Texas Department of Health:

Darla Southwest

Date of Inspection: December 28, 1999
Location: Providence Memorial Hospital, El Paso
Citation: Failure to have documents onsite [25 TAC 295.45(f)(3) and 25 TAC 295.62(c)(2)(C)(F)]

Felan & Associates, Inc.

Date of Inspection: April 16, 1999
Location: Danny Boy Motel, San Antonio
Citations: Failure to conduct a mandatory asbestos survey, Failure to provide an amended notification – start date [25 TAC 295.34(c) and 40 CFR Part 61, Subpart M, 61.145(a); 25 TAC 295.61(e) and 40 CFR Part 61, Subpart M, 61.145(b)(B)(1)]

Integrated Health Services, Inc.

1. *Date of Inspection:* N/A
Location: Integrated Health Services – Terrell, Terrell
Citation: Failure to pay the required notification fee [25 TAC 295.61(j)(4)]

2. *Date of Inspection:* N/A
Location: Heritage Gardens, Carrollton
Citation: Failure to pay the required notification fee [25 TAC 295.61(j)(4)]

Park Stemmons, Limited

1. *Date of Inspection:* N/A
Location: Building, 8700 Park Stemmons, Dallas
Citation: Failure to pay the required notification fee [25 TAC 295.61(j)(4)]

2. *Date of Inspection:* N/A
Location: Building, 8700 Park Stemmons, Dallas
Citation: Failure to pay the required notification fee [25 TAC 295.61(j)(4)]

Universal Industries Services, Inc.

1. *Date of Inspection:* N/A
Location: Gunn Junior High School, Arlington
Citation: Failure to provide a timely notification of asbestos related activities [25 TAC 295.61(c) and 40 CFR Part 61, Subpart M, 61.145(b)]

2. *Date of Inspection:* N/A
Location: Wood Elementary School, Arlington
Citation: Failure to provide a timely notification of asbestos related activities [25 TAC 295.61(c) and 40 CFR Part 61, Subpart M, 61.145(b)]

3. *Date of Inspection:* N/A
Location: Arlington High School, Arlington
Citation: Failure to provide a timely notification of asbestos related activities [25 TAC 295.61(c) and 40 CFR Part 61, Subpart M, 61.145(b)]

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Asbestos Articles From Around the Country

Cases Awarded in Texas

Man Wins \$18 million in asbestos case

February 23, 2001
Jennifer Shubinksi
El Paso Times

An El Paso jury awarded \$18 million to a local laborer who had been exposed to asbestos during this 40-year career at Phelps Dodge Cooper Products.

The case against New York-based Quigley Company, Inc., a subsidiary of Pfizer, Inc., was heard in Judge Lupe River's 168th District Court.

El Pasoan, Miguel Agustin, Calderon, 69, was found last year to have asbestosis, a scarring of the lung tissue caused by asbestos fibers. Calderon's attorneys alleged that his disease was caused by exposure to Insulag, an asbestos-containing product manufactured by Quigley. Insulag brand powdered insulation is used to protect furnaces, pipes and boilers.

After eight days of testimony, a jury of five men and seven women awarded Calderon \$15 million in punitive damages and more than \$3 million for past and future compensatory damages.



Asbestos Suit Settlement

February 17, 2001
Associated Press
New York Times

On February 13, 2001 a jury in Beaumont, Texas, awarded \$35.2 million to 22 former workers who suffered asbestos-related injuries while employed at the Texaco Refinery in Jefferson County, Texas. The plaintiff's lawyers presented evidence linking their client's pulmonary disease to asbestos used in metal gaskets made by a company former owned by Gasket Holdings, Inc., and in a drywall compound made by United States Gypsum, a unit of USG.



Asbestos in Crayons

The Big Picture About Asbestos in Crayons

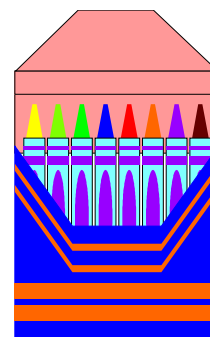
June 19, 2000

Andrea Sesko

American Council on Science and Health

In response to claims that asbestos had been found in the three most popular brands of crayons, the Consumer Product Safety Commission (CPSC) completed an analysis of the asbestos content of crayons last week. The CPSC's analysis found that asbestos was indeed present in the crayons but in an insignificant amount.

An independent study by Dr. Rudolph J. Jaeger, Ph.D., editor of the Inhalation Newsletter, showed that children are not in danger of inhaling the asbestos fibers while coloring because the fibers are not released into the air. Dr. Jaeger also emphasized that even if children eat crayons, they are not at risk because only inhalation of asbestos causes cancer.



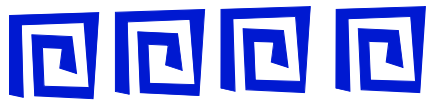
The source of the asbestos in the crayons was found to be talc — which is used as a strengthening agent in the crayons — produced in a mine owned by R. T. Vanderbilt Co. in upstate New York.

The term "asbestos" refers to the fire-resistant properties of the fibers; it is not a chemical name. There are actually six different materials currently regulated by the Occupational Safety and Health Administration (OSHA) as asbestos. These materials can exist in nature in different forms, and each form is given a separate name by geologists.

Health professionals believe all forms of asbestos fibers can break down into the form that causes asbestos-

Asbestos Articles From Around the Country

related disease, while industry geologists refer to some forms of the fiber as “non-asbestiform” and insist they cannot cause disease. It is this “non-asbestiform” version of the fiber that was found in the crayons. Non-asbestiform fibers, such as those found in the mine and the crayons, do not fall under OSHA’s regulations.



Libby, Montana & W.R. Grace

Grace Co. fought asbestos label - Insulation maker feared that a warning would hurt sales, records show

February 14, 2000.

Adrianne Appel and Neil Swidey

Globe Correspondent and
Globe Staff

W. R. Grace Co. sold millions of bags of home attic insulation that contained asbestos, but the company never warned the public, documents obtained by the Globe show.

Officials with Grace, whose Cambridge-based Construction Products Division oversaw Zonolite Attic Insulation until it was discontinued in 1984, knew as far back as 1963 about the asbestos. But they were worried that a warning label would hurt sales, memos from high-ranking Grace officials show.

Asbestos study's results alarming - Exposure in Libby blamed for high rate of lung disease

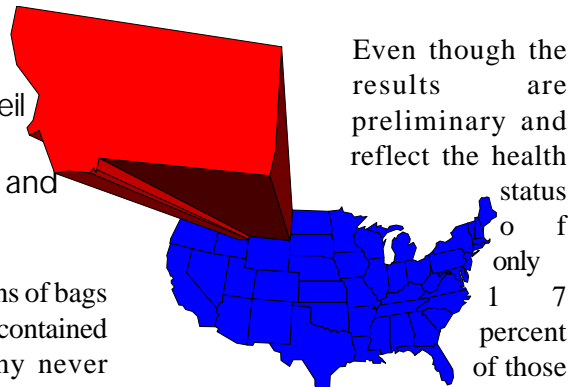
Friday, February 23, 2001

Andrew Schneider

Seattle Post-Intelligencer

Preliminary findings from the first in-depth health study of people who lived or worked near a vermiculite mine near Libby, Mont., show that a third have signs of asbestos-caused disease — results called “alarming” by federal officials.

The results of the nation’s largest-ever environmental health study, released last night by the Agency for Toxic Studies and Disease Registry, angered Libby residents who had crowded into a City Hall meeting room.



screened, health experts emphasize the importance of the announcement.

“ATSDR’s work may be the most significant health finding regarding asbestos poisoning in the last 30 years,” Dr. Christopher Weis, the Environmental Protection Agency toxicologist who is evaluating conditions in Libby. “The findings in Libby have shaken our understanding

of asbestos toxicity. It is astounding that exposure to the general public in Libby has resulted in such a high rate of lung abnormalities.”

The government performed medical tests on 6,144 people between last July and November, when funding for the screenings ran out.

The principal goal of the study was to identify residents of Libby and surrounding Lincoln County who have asbestos-related disease from exposure to tainted vermiculite from a mine on nearby Zonolite Mountain that was the area’s largest employer from 1924 to 1990, said Dr. Jeffrey Lybarger, the project’s principle investigator.

The study is also to help the EPA identify and eliminate current asbestos exposure, identify types of illnesses and help local health care providers determine treatment needs over the next 10 to 20 years.

The tests were provided to former W.R. Grace & Co. workers and their families, as well as people who lived, worked, attended school or participated in activities in the Libby area for at least six months before Dec. 31, 1999. ATSDR also sent medics to Elko, Nev., to examine 70 former Libby residents now living there. All received three chest X-rays and a lung capacity test, which are being evaluated by four physicians.

Abnormalities shown by X-rays or diminished lung performance are often indications of asbestosis, mesothelioma or lung cancer.

Asbestos Articles From Around the Country

In 30 percent of 1,067 examinations reviewed so far, at least one of the four doctors observed signs of clinical abnormalities. Of those, half were former Grace workers or contractors, and 29 percent were children, spouses and other relatives of Grace employees who were likely exposed to contaminated work clothes at home.

About 25 percent of those with abnormalities were likely exposed to asbestos through recreation — playing in piles of vermiculite that Grace stored in town. Twenty-one percent lived in homes insulated with Zonolite vermiculite.

The toxicity of the insulation has become a nationwide issue, with several pending class-action lawsuits filed on behalf of residents of 2 million to 12 million homes that might have the Libby vermiculite in their attics or walls.

The health problems at Libby first became public in 1999 when the Seattle Post-Intelligencer reported that at least 192 people had died from the asbestos in the Grace mine's vermiculite ore, and at least another 375 people had been diagnosed with fatal diseases caused by this silent and invisible killer. That number has soared over the past 18 months.

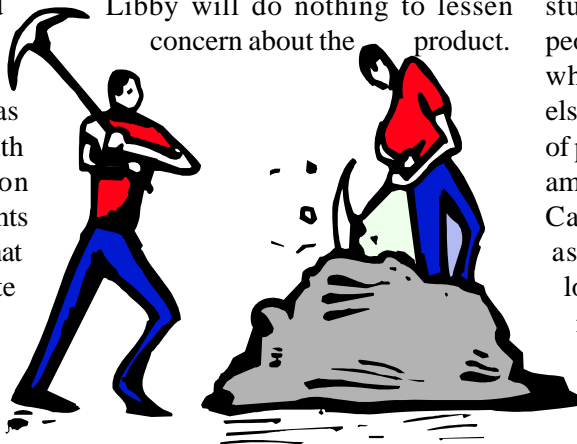
Grace insists the old insulation poses no health danger and maintains that it knew nothing of the danger from the contaminated ore.

In a Jan. 18 letter to the EPA, Grace's vice president for public and regulatory affairs wrote that "... the current management of Grace has

(sic) been in place for less than two years when the Seattle Post-Intelligencer stories about Libby ran. Prior to those news stories, we had no reason to believe that there was a continuing environmental problem in the community."

Grace officials could not be reached for comment on the preliminary results released last night.

The EPA is doing a national study on the toxicity of Zonolite insulation, but results won't be known for months. ATSDR's preliminary findings in Libby will do nothing to lessen concern about the product.



"Until the investigations are finished, we strongly recommend the millions of people who may be living in houses with Zonolite insulation to not disturb the material at all," says EPA's Weis. "Just don't mess with it until we can document what the hazard might be." Tremolite asbestos is a contaminant in the vermiculite ore from Libby, and the P-I has documented that the ore was sent to more than 200 processing plants and manufacturing sites where workers became ill and died.

For decades, local, state and federal agencies knew of the hazard, but took no action. Within days of the P-I report, the EPA sent an emergency

response team to Libby to evaluate the hazard and to clean it up. The team remains there, still. Responding to requests from the Montana congressional delegation and then-health secretary Donna Shalala, ASTDR moved 60 or more medical personnel into a temporary building hurriedly constructed by the EPA.

Lybarger said he anticipates that 5,000 patients whose X-rays remain to be evaluated may show a lower rate of abnormalities, but added that "of course, we can't be sure."

Some health experts say they're stunned at the exposure levels of people who did not work at the mine, which are far higher than found elsewhere. For example, the amount of pleural or lung abnormalities found among blue-collar workers in North Carolina who did not work with asbestos is 0.2 percent. Among loggers in Washington and Oregon, it's 0.9 percent. The group of non-asbestos workers in Libby came in at 12 percent.

It will take months to finish evaluation of the 5,000 patients whose tests have not yet been reviewed. It is unusual for any health research organization to issue an interim or preliminary report.

"We did it because we promised the people of Libby that we'd give them some indication of the severity of the problem as soon as we could," Lybarger said. "Their level of concern and anxiety was extremely high."

The initial report on the \$5 million study did little to ease those fears.



Asbestos Enforcement Default Orders - Continued -

Universal Industries Services, Inc.
-Continued-

4. *Date of Inspection:* N/A
Location: Corey Elementary School, Arlington
Citation: Failure to provide a timely notification of asbestos related activities [25 TAC 295.61(c) and 40 CFR Part 61, Subpart M, 61.145(b)]

5. *Date of Inspection:* N/A
Location: Atherton Elementary School, Arlington
Citation: Failure to provide a timely notification of asbestos related activities [25 TAC 295.61(c) and 40 CFR Part 61, Subpart M, 61.145(b)]

6. *Date of Inspection:* N/A
Location: Key Elementary School, Arlington
Citation: Failure to provide a timely notification of asbestos related activities [25 TAC 295.61(c) and 40 CFR Part 61, Subpart M, 61.145(b)]

7. *Date of Inspection:* N/A
Location: Fitzgerald Elementary School
Citation: Failure to provide a timely notification of asbestos related activities [25 TAC 295.61(c) and 40 CFR Part 61, Subpart M, 61.145(b)]

8. *Date of Inspection:* N/A
Location: Elm Place, Dallas
Citation: Failure to provide a timely notification of asbestos related activities [25 TAC 295.61(c)]

9. *Date of Inspection:* N/A
Location: Carter Junior High School, Arlington
Citation: Failure to provide a timely notification of asbestos related activities [25 TAC 295.61(c)]



There's No Hiding It—Asbestos Is Not A Trade Secret Material



by Bert Hickman,
Toxicologist
Toxic Substances
Control Division

The OSHA Hazard Communication Standard [29 CFR 1910.1200(i)(1)] allows chemical manufacturers, importers, or employers to withhold the specific chemical identity of a product from a material safety data sheet when the claim that the information withheld is a trade secret can be supported. Unfortunately, sometimes manufacturers and importers make “trade secret” claims in order to avoid disclosing information that really is not protected, but that they would rather not make public.

A great deal of confusion seems to exist about whether asbestos and asbestos-containing materials can be protected under the trade secret provision. In short, the answer is “no” for the following reasons:

- Asbestos is regulated by OSHA in substance-specific standards (29 CFR 1910.1001 and 1926.1101), and therefore labels or other forms of warning used on products containing asbestos fibers shall be in accordance with the requirements of those standards [see 29 CFR 1910.1200(f)(4)].

- The OSHA Asbestos Standards require that warning labels including the words “CONTAINS ASBESTOS FIBERS” be affixed to products containing asbestos fibers

or to their containers, unless the asbestos fibers “have been modified by a bonding agent, coating, binder, or other material, provided that the manufacturer can demonstrate that, during any reasonably foreseeable use, handling, storage, disposal, processing, or transportation, no airborne concentrations of asbestos fibers in excess of the permissible exposure limit and/or excursion limit will be released” or “asbestos is present in a product in concentrations less than 1%” [29 CFR 1910.1001(j)(4), 29 CFR 1926.1101(k)(8)].

- Under the OSHA Hazard Communication Standard, “The chemical manufacturer, importer, or employer may withhold the specific chemical identity, including the chemical name and other specific identification of a hazardous chemical, from the material safety data sheet, provided that: (i) the claim that the information withheld is a trade secret can be supported” [29 CFR 1910.1200(i)(1)]. Because the OSHA Asbestos Standards (with the exceptions noted above) require that products containing asbestos fibers be labeled with the words “CONTAINS ASBESTOS FIBERS”, the claim of trade secret cannot be supported. **Consequently, with certain exceptions, the presence of asbestos at concentrations greater than 1% is not a trade secret and must be disclosed on both product labels and material safety data sheets.**



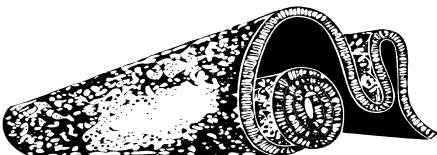
Carpet Removal and the RFCI Exemption



by Alan Morris,
Coordinator
Asbestos
Enforcement
Section

The TAHPR, under section 295.36, provides an exempted work practice for removing asbestos-containing floor tile, sheet vinyl, and mastic in public buildings. The work practice must be performed in accordance with the methods published by the Resilient Floor Covering Institute (RFCI), and pertains only to the types of flooring materials mentioned above.

Since this exemption was created, questions have been asked regarding the use of the RFCI method on jobs involving carpet that has been installed over asbestos flooring material. For example, if carpet is glued to a subfloor with asbestos-containing mastic, does the TDH allow the carpet to be removed under the RFCI exemption? If carpet is installed over asbestos tile and, as it is pulled up, the tiles stick to the back of the carpet, does the TDH consider the carpet/tile removal process to be an RFCI work practice? The answer to both of these questions is no, because the RFCI work practice is applicable only to asbestos-containing floor tile, sheet vinyl, and mastic. **There is no provision under this exemption to remove carpet that is adhered to asbestos-containing flooring material.**



Editor's Corner



by Elizabeth B.
Grimsley
Acting Public
Information Officer

Although Ruben Pino has moved on from the Asbestos Program, the Editor's Corner is continuing in the Asbestos Bulletin.

This edition of the Asbestos Bulletin includes information concerning RFCI and carpet removal, asbestos in trade secrets, asbestos in crayons and W.R. Grace. The W.R. Grace articles truly began in January – April 2000 Asbestos Bulletin with a story concerning asbestos in soil products manufactured by W.R. Grace. Since that issue, articles published by the Seattle Post Intelligencer have provided insight into the history of W.R. Grace, specifically the people of Libby, Montana.

As indicated in the accompanying articles on pages 7 and 8, asbestos-containing vermiculite was being mined in Libby, Montana from 1924 to 1990. According to a 1999 Seattle-Post Intelligencer story, 192 people in Libby, Montana, have died from asbestos-related diseases related to the vermiculite, and at least 375 more people have been diagnosed with an asbestos related disease. From 2 million to 12 million homes across the country may have the vermiculite installed in the attics and walls. The article goes on to state that W.R. Grace had no reason to believe that there was a continuing environmental problem in the Libby community.

Such a response from W.R. Grace echoes another response to an environmental problem made famous

in the movie, *A Civil Action*. Once again, W.R. Grace claimed ignorance concerning the contamination of water with trichloroethylene and tetrachloroethylene in Woburn, Massachusetts. The EPA did not agree, and the clean cost for W.R. Grace and the other responsible parties was approximately \$68 million.

In the case of Libby, Montana, W.R. Grace has quickly moved to protect their assets by announcing on April 2, 2001 to voluntarily file for reorganization under Chapter 11 of the United States Bankruptcy Code. By filing Chapter 11, W.R. Grace will continue to operate its business in the usual manner under court protection from its creditors and claimants, while trying to develop a plan for addressing the asbestos-related claims. W.R. Grace's Chairman, President and Chief Executive Officer, Paul J. Norris states, "We believe that the state court system for dealing with asbestos claims is broken, and that Grace cannot effectively defend itself against unmeritorious claims."

The quick action by W.R. Grace will certainly protect the company's \$1.6 billion annual sales from asbestos claims. And W.R. Grace will have joined at least 26 other companies since 1982 that have filed Chapter 11 in regard to asbestos litigation. But perhaps what we are really seeing here, is the growing change in asbestos litigation; the company weighing the cost of doing business, versus the cost of protecting public health and their own workers.



Training Provider Corner



by Jorge Montemayor,
Coordinator
Asbestos Training
Section

The Asbestos Trainer Licensing Section would like to welcome the following people to the section: **Teresita Hernandez** and **Dustin Exner**. Mrs. Hernandez will be responsible for receiving and processing all course notifications to include variance requests. Please direct all notices to Teresita's attention. Mr. Exner will be responsible for the scheduling,

proctoring of asbestos examinations and qualification review of license applications.

Reminder!

Digital training rosters being submitted to the trainer licensing section need to be originals and not duplicates. This will allow the asbestos licensing section to process license applications in a timely manner.



Licensing Section

by Christina Owens,
Coordinator
Asbestos Licensing Section

The Asbestos Programs Branch would like to welcome **Ms. Yolanda Simmons** and **Mr. Lowell Schorr** to the Asbestos Licensing Program. Ms. Simmons will be responsible for Air Monitoring Technicians, Project Managers, Individual Consultants, and Consultant Agencies. Mr. Schorr, who is scheduled to start on May 1, 2001, will be responsible for Contractors, Transporters and Supervisors.

Licensing Section



by Christina Owens,
Coordinator
Asbestos
Licensing

Reminders!

Applications for licensure are typically being processed within three weeks of receipt in our program, assuming that all of the required qualifications have been met.

Section 295.31(e) states: "...All licensed individuals must have the identification card issued by the department on the work site at all times while engaged in any asbestos-related activity." Since a receipt represents only proof of payment, it cannot be accepted as proof of meeting the requirements for licensure.

Section 295.38(h) states: "To practice with lapsed licenses and registrations is prohibited, regardless of when the renewal application is received. Also, licenses or registrations which have lapsed for a period exceeding 180 days cannot otherwise be renewed. A new application subject to current qualifications is required." Therefore, in addition to a current physical, you will have to provide the licensing program with a copy of your initial training course certificate(s) and all subsequent refresher certificates. Since the licensing program actively participates in the State Record Retention program, we will likely not have immediate access to a person's prior information, if the license six months.

Duplicate licenses: The licensing program needs a licensee's current accreditation(s), physical, and 1"x1" photograph, prior to issuing a duplicate license. Once a duplicate license is issued the original license will be voided.

License renewals may be submitted as early as sixty (60) days prior to the license expiration date on the card. This allows the department additional time to process your license, and you will not experience a potential lapse in licensure, should there be a large influx of applications at the time you are ready to renew. Licenses submitted, more than thirty (30) days prior to expiration, will still be valid for a period of one year, and the new license will start on the day immediately following the expiration of the existing license.

Currently, all licensing applications, Physician Written Opinion, Duplicate license applications, etc., are available on our web site at www.tdh.state.tx.us/beh/asbestos.



New Asbestos Outreach Booth

New Personnel in Austin

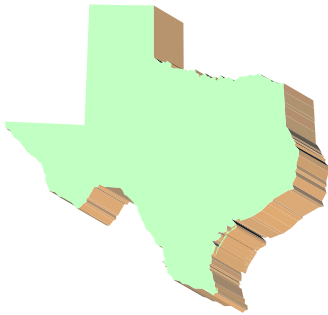
Alyson Vinsant - Open Records
Coordinator

Yolanda Simmons - Licensing

Lowell Schorr - Licensing

Dustin Exner - Training

Teresita Hernandez- Training



New Personnel in Regions

Region 2/3 - Debbie McCoy

Region 2/3 - Robert Aquirre

Region 5/6 - Mary Salazar

Region 7 - Jack Cain



Anticipated Upcoming Outreach Programs Activities:

*World Safety Organization 15th Annual Inter-
national Environmental Health & Safety Con-
ference and Exposition
September 10-12, 2001
Waco, Texas*

*Texas ASCD Annual Conference
October 8-9, 2001
Austin, Texas*

**Texas Department of Health
Asbestos Programs Branch
1100 W. 49th Street
Austin, Texas 78756**

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